

## CALIFORNIA COASTAL COMMISSION

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## STAFF REPORT: APPEAL

## SUBSTANTIAL ISSUE DETERMINATION/ DE NOVO FINDINGS

**Local government** .....San Luis Obispo County

**Local Decision** .....D020349P - Approved with conditions (see Exhibit C).

**Appeal Number** .....A-3-SLO-04-019

**Applicant**.....Claire Goedinghaus

**Agent** .....TSLLC/MCD

**Appellants** .....Commissioners John Woolley and Mike Reilly.

**Project location** .....Highland and Mar Vista Drives, Los Osos, San Luis Obispo County (Estero Planning Area (APN(s) 074-025-008) (see Exhibit A).

**Project description**.....Develop eight single-family residences in two phases. Phase 1 allows the construction of four residences prior to completion of the Los Osos community sewer; Phase 2 allows construction of four residences after sewer completion. Residences range in size from 3,920 s.f. to 5,580 s.f. located on eight parcels ranging from 14,800 s.f. to 22,000 s.f..

**File documents**.....County permit D020349P; San Luis Obispo County certified LCP; Tract 2161; COAL 94-097; Voluntary Merger (County File S030154V); *Evaluation of 1996 Existing Conditions and Habitat Conservation Plan Considerations for Tract 2161*(David Wolff Environmental, 6/7/04); Botanical Survey (V.L. Holland, Susan Weis, 8/3/94); Cultural Resource Investigation (Parker and Associates, 1994).

**Staff recommendation** ...**Project raises a Substantial Issue; Approval with special conditions.**

## Summary of Staff Recommendation

The County of San Luis Obispo approved a proposal to develop eight single-family residences in two phases in the community of Los Osos. Phase 1 allows the construction of four residences prior to completion of the Los Osos community sewer. Phase 2 allows construction of four additional residences after sewer completion. The residences range in size from 3,920 square feet to 5,580 square feet and are located on eight parcels ranging from 14,800 square feet to 22,000 square feet.



**California Coastal Commission**  
**October 2004 Meeting in San Diego**

Staff: J.Bishop Approved by:

This decision has been appealed to the Commission. The standard of review for this project is the San Luis Obispo County certified Local Coastal Program (LCP). The Appellants contend that the project, as approved by the County, is inconsistent with standards and ordinances of the LCP regarding: 1) allowable development densities; and, 2) availability of adequate public services.

The County indicates that the subject 4.35-acre parcel was previously subdivided into eight individual lots (Tract 2161), and subsequently approved a two-phased project totaling eight single-family residences. The Appellants contend that the approved project exceeds the density allowed under the Coastal Zone Land Use Ordinance (CZLUO) of one single-family dwelling for each legal parcel by calling into question the underlying subdivision. The local approval of the subdivision Tract 2161 does not appear to have been appropriately noticed to the Commission and given the amount of time that has passed since the County approved the subdivision (approx. 8 years), it is likely that the coastal permit for Tract 2161 is expired although there is evidence in the record that the tentative tract map approval was properly extended. Coastal development permit extensions have not been filed in accordance with the LCP. Thus, the project as approved by the County raises **a substantial issue**.

Concerns are also raised regarding the availability of public services in the community of Los Osos. LCP Policy 1 for Public Services requires that new development demonstrate the availability of adequate public service capacities prior to issuance of the coastal development permit. The County approved a two-phased project, with Phase 2 being contingent upon connection to the community-wide sewer. In other words, four future homes have been approved reliant on a sewer system that has yet to be built. In addition, the availability of sustainable domestic water supplies in Los Osos remains a serious concern. The County approved project is inconsistent with the LCP because it relies on a phased development at a time when sustainable public service capacities are in question. Thus, **a substantial issue** is raised with respect to public services.

In the time since the appeal was filed, the Applicant has worked with Staff to address some of the substantial issues raised by the phased development, and has agreed to modify the proposed project accordingly. Most significantly, the Applicant has agreed to eliminate Phase 2 development. In addition to the Commission's standard conditions, three additional conditions are recommended here to bring the project into conformance with the LCP. The first identifies the new project through the submittal of modified plans (for clarity in permit implementation and condition compliance). The second condition requires retrofitting of existing facilities in the community to offset the additional water demands of the approved project. The final condition maintains the County conditions of approval, except for Phase 2 development, and indicates that any County conditions imposed under an authority other than the Coastal Act continue to apply. Thus, the proposed project, as conditioned, addresses the previously identified substantial issues, including issues raised by the original subdivision, and it can be found consistent with the LCP and the applicable access and recreation policies of the Coastal Act. Staff recommends **approval with conditions**.



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## I. Local Government Action

On February 6, 2004, the San Luis Obispo County Hearing Officer approved a coastal development permit for construction of eight (8) single-family residences to be constructed in two phases. The action is subject to 20 Conditions of Approval. A Mitigated Negative Declaration under CEQA was completed for the project on November 20, 2003, and was approved at the same time. Notice of the County's action on the coastal permit was received in the Commission's Central Coast District Office on February 25, 2004. The Commission's ten-working day appeal period for this action began on February 26, 2004 and concluded at 5pm on March 10, 2004. A valid appeal (see below) from Commissioners Woolley and Reilly was received during the appeal period. The complete text of the County's findings and conditions of approval can be found in Exhibit C.

## II. Summary of Appellants' Contentions

The appellants, Commissioners Woolley and Reilly, have appealed the final action taken by the County of San Luis Obispo on the basis that approval of the project is inconsistent with policies of the certified Local Coastal Program pertaining to: 1) allowable development density; and 2) availability of public services. Specifically, they contend that the approved project exceeds the density allowed under the Coastal Zone Land Use Ordinance (CZLUO) of one single-family dwelling per legal parcel, and that the phased development project has not shown that adequate public service capacities exist. The appellants' contentions can be found in Exhibit D.

## III. Standard of Review for Appeals

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is between the first public road and the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to approve a coastal development permit for the project. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the first public road and the sea, which is the case with this project.



## IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

**MOTION**: *I move that the Commission determine that Appeal No. A-3-SLO-04-019 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

### **STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

### **RESOLUTION TO ADOPT SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-3-SLO-04-019 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

## Recommended Findings and Declarations

The Commission finds and declares as follows:

## V. Project Description

### A. Project Background

The proposed project has a complex history involving a series of local approvals dating back to 1995. The current 8-lot configuration is the result of a lot line adjustment (COAL 94-097), a subdivision (Tract 2161), an amendment to the subdivision (Tract 2161), and a voluntary lot merger (S030184V). The following is a summary of how the 8 lots were created.

#### **COAL 94-097**

August 7, 1995 the County Subdivision Review Board approved a lot line adjustment (COAL 94-097) merging ten (10) lots into four (4) lots, for a net reduction of six (6) lots. These lots, also located in Los Osos, were part of a 10-lot Cuesta-by-the-sea grouping owned by the current applicant. Much of this property is subject to environmental constraints including high groundwater, flooding, and the presence of identified wetlands. The intention of the owner was to offset the density increase of the future subdivision proposal (Tract 2161).



### TRACT 2161

On February 8, 1996 the County approved the subdivision Tract 2161 on the subject 4.35-acre parcel. The six lots that were retired under COAL 94-097 were added to the Tract 2161 parcel for a new total of seven (7) lots. Embedded as a condition of this approval, the property owner was required to record COAL 94-097, as described above. The merger of COAL 94-097 was recorded in San Luis Obispo County on May 7, 1998.

### Road Exception Request

On July 17, 1997 the County amended Tract 2161 by granting a Road Exception Request to the tentative tract map. The road exception request allowed adjustment of the requirement for county standard sidewalk from concrete on both sides of the road (Seahorse Lane) to a decomposed granite pathway on one side of the road only. The Commission received a Final Local Action Notice for this decision on July 23, 1997.

### Voluntary Merger

Because the tentative map for Tract 2161 proposes eight lots instead of seven, one additional lot had to be merged. In 2003, prior to recordation of the final map for Tract 2161 (and as a means to obtain eight lots in Tract 2161), the owner merged two of the remaining Cuesta-by-the-sea lots, leaving a total of three lots. This merger was recorded on November 18, 2003.

## B. Project Description

At this time, the County has approved the development of eight single-family residences on Tract 2161 lots. The residences range in size from 3,920 square feet to 5,580 square feet and are located on eight lots ranging from 14,800 square feet to 22,000 square feet. The project is located on the west ends of Highland and Mar Vista Drives, approximately 600 feet west of Doris Avenue in the community of Los Osos, in the Estero Planning Area.

The County approved the development in two phases. Phase 1 allows construction of four residences prior to completion of the Los Osos community sewer. These lots are to be served by onsite septic systems and have been approved by the RWQCB. Upon completion of the Los Osos community sewer, these residences are required to connect to the community sewer and all septic systems are to be abandoned. Phase 2 would construct four new residences after sewer completion. These residences are required to be served by the new community sewer system. The County placed a scenic easement on lots 1, 3, 5, and 7 to assure that these residences could not be developed until after sewer completion (County Condition 3a).

In addition to the residences, the project includes roads, grading and drainage improvements, extensive tree planting, and a dedicated multi-purpose access trail for public use. The County approval includes 20 special conditions related to building heights; grading and erosion control; public works; archaeology; and compliance with RWQCB stormwater pollution provisions.



See Exhibit D for site plans, elevations, and the County's complete findings, and conditions of approval.

## VI. Substantial Issue Findings

The appeals by Commissioners Reilly and Woolley raise a substantial issue, because as approved by the County, the project is inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) with respect to 1) allowable densities for new development; and 2) the adequacy of sewer and water supplies.

### Allowable Densities

Maintaining appropriate development densities is an important tool to protect coastal resources and ensure that adequate public services are available to serve the community. The Appellants allege that the County's approval of eight residences exceeds the LCP's density limit of one residence per legal lot (CZLUO Section 23.04.082), calling into to question the validity of the underlying subdivision Tract 2161.

The County approval raises critical procedural issues. It appears the County failed to file a Notice of Final Local Action (FLAN) with the Commission for the original Tract 2161 approval. The FLAN would have been filed at the time the Tract 2161 map was approved by the County on February 8, 1996. The Commission has no record of receiving a FLAN and the County has been unable to find any paperwork that would indicate a FLAN was ever created or mailed to the Commission on the project.<sup>1</sup> It is noted that the Commission received a follow-up FLAN for a County approved modification to Tract 2161 (a road exception request) on July 17, 1997. The information transmitted with this FLAN repeats the original findings and conditions for Tract 2161. Arguably, this could have put the Commission on notice of the County's approval of the original subdivision.

Notwithstanding the noticing issue described above, it is believed that the coastal development permit issued for Tract 2161 is expired as there is no record of it being extended at the County. Under the LCP, a coastal development permit is valid for a maximum of 5 years.<sup>2</sup> The final expiration date of the coastal permit in this case, is February 8, 2001 (or July 17, 2002 if the road exception FLAN is used). Under either time scenario the permit appears void because substantial site work on the project did not occur, nor was the subdivision map recorded, within the permit time limit. Records show that the pre-construction meeting between the County and the applicant took place February 3, 2003, nearly two years after permit expiration. According to the applicant's representative tree removal and grubbing did not begin until October of 2002, and rough grading of the site commenced September 30, 2003.<sup>3</sup> The map for Tract 2161 was not recorded until February 2, 2004. Thus, it appears that the coastal permit for the underlying Tract 2161 was never exercised and is no longer valid.

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<sup>1</sup> Email communication with Matt Janssen, SLO County Department of Planning and Building, May 10, 2004.

<sup>2</sup> Under CZLUO Section 23.02.050, a maximum number of three, 12-month extensions to the initial 2 year time limit may be granted.

<sup>3</sup> Phone communication with Jeff Edwards, project representative, September 15, 2004.



With respect to other permit extensions, the County records show that the tentative map for Tract 2161 was appropriately extended under the rules of the Subdivision Map Act. However, there is a difference between extending the subdivision tract map and extending the coastal development permit. As described previously, the LCP has specific standards and procedures for permit extensions. In addition to requisite findings, the third and final permit extension requires noticing, a public hearing, and appeal procedures to be followed.

Because of the questions about the validity of the original subdivision, the County approved project for eight single-family homes appears to exceed the allowable density of one residence per legal parcel. Thus, the project raises **a substantial issue**.

#### Public Services

LCP Public Works Policy 1 requires that there are “sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line” prior to permitting all new development. The Appellants allege that the approved subdivision and resultant development is inconsistent with the LCP because the County approved project relies on speculative water and sewer service.

#### Water supplies

The proposed project will increase the demand for groundwater at a time when significant concerns remain regarding sustainable water supplies in Los Osos. According to estimates cited by the LCP, the basin is currently being drafted at a greater rate than it is being recharged. New development, particularly residential subdivisions, typically will demand additional water withdrawals from limited groundwater to the detriment of habitat and water supply.

#### Sewer Service

The County approved the project in two phases. Phase 1 approval includes four residences served with on-site septic systems. Phase 2 of the project is to be constructed following completion of a communitywide sewer. Upon completion, the entire development must hook up to the community sewer. Although the sewer project has recently been approved, the phased project relies on a sewer system that has not yet been built. The County approved project is inconsistent with the LCP because it relies on a phased development scheme when adequate sewer service capacities remain in question.

Thus, the project raises **a substantial issue** with respect to the availability of public services.





## VII. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **approve** the Goedinghaus coastal development permit with conditions.

**MOTION**: *I move that the Commission approve Coastal Development Permit No. A-3-SLO-04-019 pursuant to the staff recommendation.*

### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified San Luis Obispo County Local Coastal Program and the Public Access and Recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## VIII. Conditions of Approval

### A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.



- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## B. Special Conditions

- 1. Authorized Project.** This Coastal Development Permit authorizes only: Phase 1 development of four (4) single-family residences constructed on Tract 2161 lots 2, 4, 6, and 8, consistent with the final plans detailed in Special Condition #2 below.
- 2. Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of final plans to the Executive Director of the Coastal Commission for review and approval. The final project plans shall demonstrate the following:
  - a) The County required scenic easement (County Condition 3a) shall be noted on undeveloped lots 1, 3, 5, and 7. A notation should be included on the plans that future development of these parcels is subject to a separate coastal development permit.
  - b) The County imposed public access improvements (County Condition 3b), shall be graphically depicted on the project plans. The plans shall be accompanied by evidence that the design and location of the public access improvements have been reviewed and approved by San Luis Obispo County Parks Division.

The permittee shall undertake development in accordance with the final plans approved by the Executive Director pursuant to the special conditions. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Commission amendment to coastal development permit unless the Executive Director determines that no amendment is necessary.

- 2. Retrofitting.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for Executive Director review and approval, evidence that the anticipated water use of this development has been completely offset through the retrofit of existing water fixtures within the Los Osos Community Service District's service area or other verifiable action to reduce existing water use in the service area (e.g., replacement of irrigated landscaping with xeriscaping). The documentation submitted to the Executive Director shall include:
  - a. A detailed assessment of anticipated total water use (including water used for both domestic and landscaping purposes) of the approved development, measured in gallons per year, prepared by a qualified professional, and approved by the Los Osos Community Services District. This assessment shall include the specific data and analyses used to estimate water use, including the number of bedrooms/occupants, the number and types of water fixtures and appliances, the type and extent of project landscaping, and the proposed method of landscape irrigation.



- b. A detailed description of the water saving action(s) that have been taken to offset the amount of water that will be used by the project, and the amount of water savings expected to result from these actions in gallons per year. For retrofits, this shall include a description of the existing and replacement fixtures, their associated water flows, their estimated frequency of use, and the quantity of water savings expected as a result of the retrofits, calculated by a qualified professional. For water savings achieved by reducing landscape irrigation, the applicant shall document the landscaping to be removed, and submit a replacement landscape plan that documents the use of native drought resistant plants and water conserving irrigation techniques, and a quantification of the expected water savings calculated by a landscape professional.
- c. The specific address/location of where the retrofits and/or landscaping changes identified in the preceding subsection took place and the dates that they were completed, including certification of successful installation by the installers.
- d. Written verification that the Los Osos Community Services District concurs that the completed retrofits and/or landscape changes will result in water savings that meets or exceeds the anticipated water use of the project.

**3. County Conditions of Approval.** Except for County conditions of approval #1, and #13, all conditions of San Luis Obispo County's approval of the project become conditions of this permit. All conditions of San Luis Obispo County's approval pursuant to planning authority other than the Coastal Act continue to apply.

## IX. De Novo Coastal Permit Findings

By finding a substantial issue the Commission takes jurisdiction over the coastal development permit (CDP) for the proposed project. The standard of review for this CDP determination is the County LCP and the Public Access and Recreation policies of the Coastal Act.

### 1. Development Density

#### 1.1 Applicable Policies

Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.082b allows for the development of one (1) single family dwelling for each legal parcel. It states in part:

***CZLUO Section 23.04.082 – Single-Family Dwelling:** In land use categories where single-family dwellings or mobilehomes are identified by the Land Use Element "A" uses, the number of dwellings allowed on a single lot is as follows...*

***b. Residential categories:** One for each legal parcel as defined in Chapter 23.11 (Definitions – Parcel)...*



## 1.2 Analysis of Consistency with Applicable Policies

The Commission has not approved new subdivisions in Los Osos recently given the degree of concerns related to sensitive habitat protection and sustainable public service capacities in the community that have been raised in recent years.<sup>4</sup> However, given the particular circumstances and equities of this case, and the fact that the specific resource impacts due to this project can be effectively addressed through special conditions, the project can still be approved consistent with the LCP.

There is strong evidence in the record that the subdivision development underlying the current approval is a violation because it occurred under an expired permit for Tract 2161. Nonetheless, pursuing it as such makes little sense because of the complex procedural history of the project, inaccurate County direction to the Applicant concerning the validity of the subdivision and the substantial reliance of the applicant on this direction, and the relatively small benefits, in any, that potentially could be achieved through an order to remove existing development and restore the site. To the extent that an increase in residential density in this area raises resource issues under the LCP, these can be effectively addressed through the conditions attached to this permit. Public Service concerns are addressed below in subsequent findings; With respect to habitat, biological studies and environmental documents for the subdivision did not identify any sensitive habitat on the site at the time of the subdivision. (The site has since been substantially developed (i.e. grading, retaining walls, underground utilities, roads, and landscaping have been installed).) In addition, the project site is bound on three sides by residential development and lacks connectivity with other nearby habitat areas (See Aerial Photo in Exhibit B). This is an important distinction to make given the known sensitive habitat areas further upslope and to the south of the project site. The project is residential infill within an existing developed area. Moreover, the increase in residential density and associated resource demand has been at least partially mitigated by the retirement of seven lots from nearby Cuesta-by-the-Sea. These lots were highly constrained due to the presence of wetlands. To the extent that there was development potential associated with these lots, their elimination is a benefit, as development potential has been shifted from wetlands to an urban area.

With respect to the equities of the case and the reliance of the applicant, the rules for extending coastal development permits are complicated in the LCP, particularly for the third (and final) extension. Approval of a third time extension requires specific findings to be made, additional noticing, and a new public hearing. More important, the County records show that the Applicant made efforts to extend the permits in a timely manner consistent with the direction of the County. The Applicant followed the County's direction and was led to believe that extending the tract map would also extend the life of the coastal development permit. It does not seem reasonable to penalize the Applicant for the many procedural missteps of this case.

As described, the project has a complex history. The procedural issues (i.e. noticing, permit expiration, and extensions) discussed in the Substantial Issue findings reveal a lack of coordination between the

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<sup>4</sup> Denials of proposed subdivisions and conditional certificates of compliance in Los Osos by the Coastal Commission include coastal development permit applications A-3-SLO-98-087 (Pratt/Cabrillo Associates, Tract 1873), A-3-SLO-99-079 (Linsley Subdivision), and A-3-SLO-01-108 (Schoenfield Certificates of Compliance)



Commission and the County on this particular project. This issue was highlighted in the Periodic Review of 2001. The County has recently responded to these concerns through the Phase One Periodic Review Implementation effort which further clarifies and implements appropriate noticing procedures.

### 1.3 De Novo Conclusion

The project has a complex permitting history and raises important procedural issues. Adequate noticing of local approvals and accurate information regarding County procedures has been an ongoing concern with Commission staff and the County and strides are being made to improve this situation. In this case, however, it seems unreasonable to place the burden on the Applicants. As mentioned, the Applicant pursued the development in accordance with the direction given by the County. As applied in this case, the special conditions in the following sections of this report effectively resolve the substantive resource protection concerns raised by the appeal.

## 2. Public Services

### 2.1 Applicable Policies

As required by Public Works Policy 1, all new development must demonstrate that there are sufficient public service capacities to serve the development:

***Public Works Policy 1: Availability of Service Capacity.*** *New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable...*

The Estero Area Plan contains the Interim Service Capacity Allocation standard for new water allocations in the community of Los Osos, and states:

***Interim Service Capacity Allocation.*** *Prior to completion of a Resource Capacity Study, the following priorities for water use shall be established, which shall be implemented through the review and approval of subdivision and development plan proposals.*

- a. Reservation of 800 acre-feet per year (consumptive use) for agricultural use to protect existing and projected agricultural water needs in accordance with the Brown and Caldwell study (1974).*
- b. Projected infill of residential, commercial, and visitor-serving uses on existing subdivided lots.*
- c. Extend services to areas where services will correct existing or potential problems (e.g., areas with high nitrate readings) where individual wells are now in use.*



*d. Additional land division will be permitted within substantially subdivided areas in accordance with lot sizes permitted in the Land Use Element and Coastal Zone Land Use Ordinance. Findings must be made that resources are adequate to serve the previously identified higher priorities uses in addition to proposed lots.*

*e. Additional divisions would be permitted within the urban service line boundary only where adequate additional capacity is identified and it can be demonstrated that the proposed development would not jeopardize the availability of resources available to higher priority proposed uses.*

*f. Land divisions in the areas outside the urban services line and not specifically covered elsewhere in the South Bay standards, shall not be less than two and on-half acres.*

## 2.2 Analysis of Consistency with Applicable Policies

The LCP requires that new development be environmentally-sustainable, both in terms of available infrastructure and in terms of potential impacts to environmental resources such as groundwater. Public Works Policy 1 requires that there are “sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line” prior to permitting all new development. In this case, significant issues have been raised regarding the availability of adequate public services to support the project.

### Sewer

The proposed project was approved in two phases by San Luis Obispo County; Phase 1 commencing initially with septic tank service and Phase 2 taking place when that portion of the project can be connected to a community sewer system (County Condition #1, Exhibit C). Upon completion, the entire development must hook up to the community sewer.

This phased development scheme is the only manner that the project as a whole could be considered due to the current sewer moratorium in Los Osos. In January 1988, the Regional Water Quality Board imposed a septic tank discharge moratorium due to water quality degradation of the Bay and the groundwater basin from septic disposal. A prohibition zone has been established where expansions of existing buildings and new residential construction has been halted until the County provides a solution to the water degradation problem. Projects in Los Osos within the prohibition area (as is the case here) are limited to replacement of existing discharges. However, in this case, the Regional Water Quality Control Board (RWQCB) has exempted the project from the septic system prohibition because the phasing allows the project to maintain one-acre minimums for septic tank disposals (See letter from the RWQCB dated July 11, 2001 in Exhibit F of this report.)

Even though Phase 2 development can only occur once a community sewer system is in place, the phasing scheme approved by the County raises significant concern. First, it is uncertain when a community sewer system will be online. As discussed in preceding paragraphs, there has been over 20 years of community discussion surrounding substandard septic systems and adverse impacts to the quality of groundwater. While progress has been made recently regarding site design and a community sewage treatment plant, and the Commission has approved a permit for a sewer plant, the details of anticipated



community buildout, treatment plant capacity, and schedules of service remain uncertain.

Secondly, circumstances may change affecting the way in which the proposed future Phase 2 project would be analyzed. In the amount of time it takes to connect Phase 2 development with the communitywide sewer, a number of changed circumstances may occur. Changed circumstances can include a change in statewide resource policies, new knowledge about environmental threats, or newly listed endangered species in Los Osos, such as occurred in 1994 when the endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) was federally listed. Changed circumstances such as this would affect the way in which new development projects in the area would be evaluated.

In the time since the appeal was filed, the Applicant has worked with Staff to address the issues raised by the development. The applicant has agreed to modify their proposed project to eliminate the speculative Phase 2 development. Special Condition 1 requires the applicant to submit modified plans showing the elimination of Phase 2 for clarity in permit implementation and condition compliance.

#### Water Supply

In addition to the issues surrounding community sewer capacities, there are also concerns regarding the additional water demands created by the development. This is problematic due to the uncertainty surrounding the safe yield of the Los Osos groundwater basin from which Los Osos receives its water. According to estimates cited by the LCP, the Los Osos groundwater basin is currently being drafted at a greater rate than it is being recharged. The Resource Management System has recommended a Level of Severity (LOS)<sup>5</sup> of either II or III for water supply and distribution in Los Osos. This issue is detailed in the findings from the Coastal Commission Periodic Review of the San Luis Obispo County LCP.<sup>6</sup>

Most recently, the Los Osos Community Services District prepared a Safe Yield Analysis for Los Osos. The report was prepared by Cleath & Associates and was made part of the Los Osos Water Master Plan (August 2002). The findings state that under current conditions the Los Osos Valley ground water basin is estimated to have a yield of 3,560 acre-feet per year. Current ground water production in the basin has averaged 3,380 afy over the past 10 years. However, as noted in the 2001 Periodic Review, eight of the past fifteen years have been in overdraft. The safe yield analysis suggests that limited growth may be accommodated if accompanied by strategic use of extraction and recharge systems. However, without passing judgment on this assessment, it is premature to rely upon it. A thorough review and analysis of the new information through the LCP Estero Area Plan Update is needed.

The Estero Area Plan prioritizes water allocations for new development in Los Osos through the Interim Service Capacity Allocation (ISCA). Under the ISCA, new subdivisions are a low priority compared to us such as infill development on existing subdivided lots and agriculture. The Applicants highlight the fact that the increased density has been mitigated by the retirement of seven lots from Cuesta-by-the-Sea.

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<sup>5</sup> For water resources a LOS III exists when water demand equals the available resource; the amount of consumption has reached the dependable supply of the resource. LOS II occurs when water demand equals or exceeds the estimated dependable supply.

<sup>6</sup> page 62-63 of Exhibit A to Periodic Review Report dated July 12, 2001



To address concerns related to water supplies, Special condition 2 requires the applicant to implement a special retrofitting condition that would offset the additional water withdrawals caused by four new residences. The conditions of this permit allow the proposed development to be constructed only if its anticipated water use is completely offset through the implementation of verifiable water conserving actions, such as by replacing existing water fixtures with water conserving fixtures, and/or replacing irrigated landscapes with landscaping that requires little to no water. This approach will allow the project to proceed in a manner that will not exacerbate existing concerns regarding the adequacy of Los Osos water supplies.

This approach, by itself, does not provide adequate guarantees that retrofits will be completed in a timely fashion, or adequately compensate for the additional water use attributable to the proposed development. Therefore, the conditions of this permit specify that the water conserving actions required to offset the increase in water demand associated with the project must be completed before the coastal development permit is issued. The terms of this condition also call for the LOCSD to participate in reviewing the adequacy of the proposed water savings actions, and in ensuring that the necessary water saving actions are effectively implemented and maintained. With this condition, the project will avoid inconsistencies with LCP requirements calling for adequate water supplies.

### 2.3. Public Services Conclusion

Given the uncertainty surrounding existing and future public service capacities and the potential for changing environmental resource constraints in Los Osos, it is appropriate to take a precautionary approach and not approve Phase 2 development at this time. Following the appeal, the Applicant has agreed to delete Phase 2 from the approved project.

By prohibiting a net increase in water use (see Special Condition 2), the project will not result in additional withdrawals and will thereby avoid adverse impacts to coastal resources. By prohibiting Phase 2 development (see Special Condition 1) and requiring retrofitting (see Special Condition 2), the project will not rely on speculative public service capacities or water availability and will thereby avoid potential adverse impacts to coastal resources. Only with these conditions can the Commission approve the project consistent with the Public Works policies of the LCP.

## 3. Public Access and Recreation

### 3.1 Applicable Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” Because this project is located between Los Osos Valley Road (the first through public road) and the sea, for public access and recreation issues the standard of review is not only the certified LCP but also the access and recreation policies of the Coastal Act. The Coastal Act includes requirements to maximize access, protect existing access, provide access in new development projects, and protect lands for public recreational uses and facilities (including Coastal Act





policies 30210 – 30214, 30221 – 30223, and 30240(b)).

### 3.2 Analysis

#### Multi-purpose Access Trail

In the past the public has used the parcel as a through public access/equestrian connection from inland Sea Horse Lane through to Pecho Road and the beach. In part, this is the reason for the County's requirements to construct a public access trail at the southern property boundary. The proposed multi-purpose public trail would enhance through access from Sea Horse Lane to Pecho Road by providing a designated space for pedestrians, bicyclists, and horseback riders to move between these two roads towards the coast. According to the applicant a portion of this trail is already complete. This portion of the project should enhance public access as directed by the Coastal Act cited above. To formalize the multi-purpose access trail Special Condition 1c requires that it be visually depicted on final plans and that the design and location be approved by the County Parks Division.

### 3.3. Public Access and Recreation Conclusion

The proposed development can be found consistent with the LCP and Coastal Act public access, recreation, and priority site policies cited above.

## X. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

